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July 10, 1995

**BY HAND DELIVERY**

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: Amendment of Section 73.606(b)  
MM Docket No. 92-246, RM-8091  
Ridgecrest, California

Dear Mr. Caton:

On behalf of Valley Public Television, Inc., there is submitted an original and 14 copies of its *Application for Review* in the above-referenced matter.

Should any questions arise concerning this matter, please contact this office.

Very truly yours,



Kathryn A. Kleiman

KAK/bll  
Enclosures

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BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

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JUL 10 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of

Amendment of Section 73.606(b)  
Table of Allotments  
TV Broadcast Stations  
(Ridgecrest, California)

MM Docket No. 92-246  
RM-8091

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To: The Commission

**APPLICATION FOR REVIEW**

Valley Public Television, Inc. ("Valley"), by its attorneys, respectfully appeals the action taken pursuant to delegated authority set forth in the *Memorandum Opinion and Order*, released on June 9, 1995, which terminated the instant proceeding. With respect thereto, the following is presented.

In the *Memorandum Opinion and Order* ("MO&O"), the Chief of the Policy and Rules Division of the Mass Media Bureau ("Bureau") affirmed a decision which dismissed Valley's Petition for Rulemaking to substitute Channel \*41 for Channel \*25 or to establish a site restriction on Channel \*25, at Ridgecrest, California. The Bureau found the petition to be moot, not on its merits, but based on the Bureau's decision in another matter, Docket No. 93-93.<sup>1</sup> As shown below, the Bureau's conclusions ignore

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<sup>1</sup> *In Re Applications of Community Television of Southern California and Valley Public Television, Inc., Memorandum Opinion and Order*, MM Docket 93-93 (FCC 93M-489), rel. July 20, 1993 (accepting Joint Petition for Approval of Settlement Agreement and dismissing the applications) ("*Settlement Acceptance MO&O*").

the clear evidence presented in this proceeding that Valley will apply for Channel \*39 at Bakersfield within three years and that Valley's interest provides more than a sufficient basis to keep this proceeding alive.

### Background

Valley submitted an application for Channel \*39 at Bakersfield, California, in 1990 (File No. BPET-900904KF). In its application, Valley selected with great care a transmitter site which would provide coverage to more than 421,000 people and service to an area of 12,370 square kilometers. The site, which is on an antenna farm on Breckenridge Mountain, 22 miles east, northeast of Bakersfield, is far superior to any fully spaced site which must be at a lower, and therefore, undesirable location. The site proposed by Valley provides for the most efficient use of Channel \*39.

The selected site, however, is slightly short-spaced with Channel \*25 at Ridgecrest, California, a channel which has never been applied for in the more than 30 years since its allocation and cannot now be applied for due to the ATV freeze. Accordingly, Valley instituted the instant proceeding to request the substitution of Channel \*41 for Channel \*25 at Ridgecrest, or alternatively, to place a site restriction on Channel \*25 at Ridgecrest to accommodate Valley's superior transmitter site. Such an action is clearly in the public interest as it would allow the greatest number of Bakersfield residents to receive the signal of a new, full-power noncommercial educational television station. The Commission agreed and issued a *Notice of Proposed Rulemaking* on November 5, 1992, to which comments and reply comments were submitted. Nevertheless, the Bureau now seeks to terminate this fully mature

proceeding solely on the basis that it has somehow become moot. Valley appeals this decision as unfounded as well as inconsistent with policies favoring efficient handling of Commission matters.

### Grounds for Reversal

What the Bureau has done is to incorrectly link the instant proceeding with a totally different proceeding, MM Docket No. 93-93, *In Re Applications of Community Television of Southern California and Valley Public Television, Inc.* As shown by the record below, in that proceeding, Community Television of Southern California ("Community TV") and Valley filed competing applications for Channel \*39 at Bakersfield. Rather than proceed to a lengthy and expensive comparative hearing, the two applicants agreed to a settlement in which both applications would be temporarily withdrawn and neither party could re-submit an application for Channel \*39 at Bakersfield for a period of five years unless an independent third party filed for the facility within that time period.<sup>2</sup> Both applicants agreed that each would serve Bakersfield by use of separate television translators or low power TV stations. Nevertheless, Valley has stated repeatedly in this proceeding that it is committed to refile its application for Channel \*39 at Bakersfield, using the Breckenridge transmitter site, at the earliest possible time. Accordingly, completion of the instant proceeding will resolve confusion and make Channel \*39 at Bakersfield ready for applications specifying the Breckenridge site. Alternatively, the instant proceeding can simply be

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<sup>2</sup> Accepted in *Settlement Acceptance MO&O* on July 20, 1993.

kept in abeyance for a short time longer until the "hold" period on the refiling of the Channel \*39 application has expired. That would at least permit a rapid consideration of the proposal without having to start all over again -- a procedure that would not only take months of time, but also burden the Commission's already overworked staff.

Furthermore, in the *MO&O*, the Bureau incorrectly concluded that this proposal is moot because "Valley's interest in refiling its application for Channel \*39 at Bakersfield at some indefinite future date does not provide adequate justification to warrant the change at Ridgecrest" (underscoring supplied). That conclusion ignores three very clear reasons to continue this proceeding: (1) Valley clearly intends to reapply for Channel \*39 at Bakersfield, (2) its application will be submitted in the next three years at the latest, and (3) the termination and re-initiation of this proceeding will only waste Commission resources and work against recent Commission advances towards greater efficiency.

First, there is no dispute that Valley has clearly stated its intent to reapply for Channel \*39 at Bakersfield.<sup>3</sup> Valley's application will request the Breckenridge Mountain transmitter site, as it remains by far the best site from which to serve the Bakersfield market. Accordingly, it is fully consistent with Commission policy to continue this matter in order to clear the confusion surrounding this allocation and to make Channel \*39 ready for future applications at the Breckenridge Mountain antenna farm.

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<sup>3</sup> See *Petition for Reconsideration* filed by Valley Public Television, Inc. on November 16, 1993 in this proceeding.

Second, it is clear from the facts that Valley will reapply for Channel \*39 at Bakersfield three years from this August. Two years have almost passed since the settlement agreement was consummated and, if no contingency arises, the agreement will terminate at the end of five years (the agreement commenced in August, 1993 and will terminate in August, 1998). Alternatively, if an independent third-party applies for Channel \*39 Bakersfield, both Valley and Community Television are free to file competing applications. If that happens, Valley will submit its application for Channel \*39 at Bakersfield. Valley's commitment to re-submitting its application in the near future is more than sufficient to keep this proposal alive and to overcome any concern by the Commission that Valley's interests are merely speculative.

Third, termination of this proceeding is inconsistent with the Commission's commitment to reinventing government and to the rapid processing of applications and petitions. As the Commission knows well, petitions for reallocation of channels begin long and involved rulemakings which take place over many years.<sup>4</sup> In the instant case, Valley's Petition for Rulemaking was submitted to the Commission on January 8, 1991, appeared on public notice on November 5, 1992, and was not terminated until October 27, 1993. That it is inefficient and unnecessary for the Commission to terminate and then reinstate this proceeding when it knows that the issue will be the same, deciding on the Bakersfield and Ridgecrest allocations, is obvious. Such a course of action will

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<sup>4</sup> In fact, initial discussions regarding the possible allocation of Channel \*41 at Ridgecrest were part of a proceeding begun in 1985 and terminated in 1992, seven years later. *Memorandum Opinion and Order*, MM Docket No. 85-390, 7 FCC Rcd. 5601 (1992).

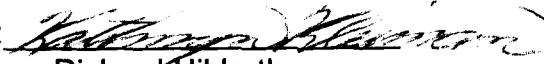
only burden an already busy Commission staff with an issue that has previously been raised and comments filed, tax the limited resources of noncommercial educational television stations, and ultimately delay the introduction of a new, local, free, and noncommercial educational television service to the residents of Bakersfield. Instead, the Commission should use the window of opportunity which has been created by the temporary settlement agreement to end the confusion and complete this proceeding.

Should the Commission not wish to proceed with the proposed rulemaking at this time, it should hold it in abeyance pending the refiling of Valley's application for Channel \*39 at Bakersfield specifying the Breckenridge transmitter site.

WHEREFORE, THE PREMISES CONSIDERED, it is respectfully requested that the Commission reverse the *Memorandum Opinion and Order* in MM Docket 92-246 (RM-8091) decided pursuant to delegated authority, and continue its consideration of Valley Public Television's proposal to substitute Channel \*41 for Channel \*25 at Ridgecrest, or to establish a site restriction on Channel \*25 at Ridgecrest. If the Commission does not wish to proceed with the allocation question now, then it is requested that it hold this matter in abeyance until Valley re-submits its application for Channel \*39 at Bakersfield, which filing will taken place no later than September 1, 1998.

Respectfully requested,

VALLEY PUBLIC TELEVISION, INC.

By:   
Richard Hildreth  
Kathryn A. Kleiman

Its Attorneys

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July 10, 1995

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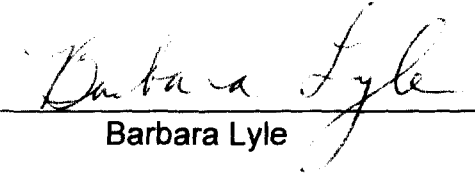


## CERTIFICATE OF SERVICE

To ensure that service is complete in this matter, a copy of this *Application for Review*, is being served on counsel for Community Television of Southern California, which filed comments in this proceeding.

I, Barbara Lyle, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C. do hereby certify that a true copy of the foregoing *Application for Review* was sent this 10th day of July, 1995, by first class United States mail, postage prepaid, to the following:

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